MARATHON OIL COMPANY
CHEVRON OIL COMPANY

IBLA 75-7 Decided February 20, 1975

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, refusing to grant a 10-year renewal for oil and gas lease Cheyenne 032201(b).

Affirmed.

1. Oil and Gas Leases: Renewals -- Oil and Gas Leases: Twenty-year Leases --Oil and Gas Leases: Unit and Cooperative Agreements

Where a 20-year oil and gas lease, committed to an approved unit agreement prior to the end of its initial term in 1962 and thereby extended beyond the original term, is eliminated from the unit agreement in 1972 and its term is automatically extended for 2 years and so long thereafter as oil or gas is produced in paying quantities, such a lease is not eligible for further 10-year renewals and an application for such a renewal filed in 1974 is properly rejected.

APPEARANCES: Blair Klein, Esq., Casper, Wyoming, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Marathon Oil Company and Chevron Oil Company have appealed from a decision of the Chief, Branch of Lands and Minerals Operations, Wyoming State Office, BLM, dated May 31, 1974, refusing to grant a 10-year renewal of 20-year oil and gas lease Cheyenne 032201(b) held jointly by them.

Lease Cheyenne 032201(b) was executed on July 9, 1937, effective July 20, 1935, for an original term of 20 years "with the preferential right in the lessee to renew this lease for successive periods of ten (10) years, upon such reasonable terms and conditions as may be prescribed by the lessor, unless otherwise provided by law at the time

of the expiration of such periods." § 1 of the Lease Agreement. 1/ As originally issued the lease embraced 1908.36 acres. Subsequent relinquishments by appellants have contracted the area of the lease to 40 acres consisting of the SW 1/4 SW 1/4 sec. 24, T. 21 N., R. 79 W., 6th P.M., Wyoming.

Section 2(b) of the lease limited the lessee's drilling rights to the drilling of wells which were "necessary to offset drainage from the leasehold through wells on adjoining lands unless and until authorized in writing by [the Secretary of the Interior] to drill or produce additional wells." By letter dated October 23, 1941, the Acting Supervisor of the Casper Office, Geological Survey, informed appellants that the drilling restrictions in the original lease would be terminated effective January 20, 1942. Accordingly, pursuant to section 39 of the Act of February 9, 1933, 47 Stat. 798, 30 U.S.C. § 209 (1970), the original 20-year term of the lease was extended to January 20, 1962.

On March 28, 1949, the 40-acre tract at issue was committed to the Big Medicine Bow Unit, effective May 1, 1949. The lease remained subject to the unit until it was eliminated therefrom by a contraction of the unit approved October 18, 1972, effective September 15, 1972. Appellants were informed by letter dated November 7, 1972, from the Chief, Oil and Gas Section, Wyoming State Office, BLM, that the lease would be continued in effect for two years, or until September 15, 1974, and so long thereafter as oil and gas was produced in paying quantities.

On March 14, 1974, appellants filed an application for a preferential 10-year renewal of its lease. The application was rejected by decision of May 13, 1974, from which decision appellants have timely appealed.

Appellants contend that their request for renewal, at the time at which it was filed, was the only possible method of obtaining a renewal available in light of two Departmental decisions: H. Leslie Parker, 62 I.D. 88 (1955), and Texaco, Inc., 76 I.D. 196 (1969). An examination of the chronology of facts set out above as they relate to the two decisions, however, clearly shows that appellants are not in a position to claim any detrimental reliance on these Departmental decisions.

1/ The lease was originally issued to one William Kyle for a period of 20 years from July 20, 1935. Kyle assigned the lease to appellant Marathon Oil Company and Chevron Oil Company by an instrument dated May 18, 1937, and approved by the Department November 20, 1937.

[1] We note at the outset that the Texaco doctrine is open to some question. Shortly stated, the Texaco opinion held that any 20-year oil and gas lease committed to a unit on the expiration date of its original or renewal term lost its right to a 10-year renewal and would be continued for the life of the unit, or until it was eliminated from a unit, and then for two years and so long thereafter as oil and gas was produced in paying quantities. In Omaha National Bank, 11 IBLA 174 (1973), various divergent views were expressed as to the correctness of the Texaco holding, particularly when read in conjunction with the Departmental decision rendered in the Parker case, supra. But there is no intimation in any of the opinions in the Omaha National Bank case that a renewal application was proper at any time other than preceding the end of the original or a renewal term. See 43 CFR 3107.8-2.

In the instant case, the original 20-year term, after extension because of suspension of drilling rights, expired on January 20, 1962. No application for a renewal lease was filed at that time. By the clear wording of the applicable statute, § 17 of the Act of February 25, 1920, as amended, 30 U.S.C. § 226(j), the lease was therefore continued in force until the termination of the unit plan, or the lease's elimination therefrom. Regardless of whether or not Texaco continues to be good law appellants clearly did not rely on it in failing to apply for a renewal lease in 1962. The Texaco decision was not promulgated until 1969, more than seven years after a renewal lease should have been sought. Texaco, itself, marked a drastic break with past Departmental practices. Prior to the decision in Texaco renewals were routinely granted for 20-year leases which were committed to an approved unit agreement. It is helpful to note that the Departmental decision in Texaco reversed the decision of the BLM Office of Appeals and Hearings which had found issuance of a renewal lease proper.

Furthermore, as is obvious from Texaco, in that case there were rational grounds for not seeking a renewal of a 20-year lease, since such renewal lease could require additional rents or higher royalties. Thus, since at the critical renewal date in 1962 as the law was then being administered, an option was available to appellants, and we note nothing in Parker, supra, to indicate that it was not so available, we can see no grounds for an allegation of disadvantageous reliance on Departmental precedents. Having exercised their option by not timely seeking a renewal, appellants have waived any right they may have had to such a renewal. The lessees having not made a timely application for renewal, the lease was kept alive solely by being in a unit. A lease having been once thus sustained does not have a right to a 10-year renewal when the unit is terminated or contracted. As was stated in Parker, once a lease which is eligible for both a 10-year renewal or continuation by being part of a unit is extended by reason of being in a unit, the lease loses its right to further renewals.

Parker, supra at 95. Thus, in any event, this lease lost its right to a 10-year renewal when the extended original term ended in 1962 and the lessees did not file for a 10-year renewal.

Appellants also contend that the provisions added by § 1 of the Act of August 21, 1935, 49 Stat. 677, are not applicable to its lease since it was issued effective July 20, 1935. Appellant is apparently under a misapprehension of what segment of the law was utilized in the Texaco decision. The Assistant Solicitor relied upon the provision of the law which states that:

> Leases issued prior to the effective date of this amendatory Act shall continue in force and effect in accordance with the terms of such leases and the laws under which issued: Provided, That any such lease that has become the subject of a co-operative or unit plan of development or operation, or other plan for the conservation of the oil and gas of a single area, field, or pool, which plan has the approval of the Secretary of the Department or Departments having jurisdiction over the Government lands included in said plan as necessary or convenient in the public interest, shall continue in force beyond said period of twenty years until the termination of such plan * * *.

There is a suggestion in the opinion of the Assistant Solicitor that this language first appeared in the Act of August 21, 1935, 49 Stat. 674. Actually, however, the language initially appeared in the Act of July 3, 1930, 46 Stat. 1007, as follows:

> * * * Leases shall be for a period of twenty years, with the preferential right in the lessee to renew the same for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the time of the expiration of such periods: Provided, That any lease heretofore or hereafter issued under this Act that has become the subject of a cooperative or unit plan of development or operation of a single oil or gas pool, which plan has the approval of the Secretary of the Interior as necessary or convenient in the public interest, shall continue in force beyond said period of 20 years until the termination of such plan * * *.

It follows, therefore, that appellants' reliance on the effective date of the lease is misplaced.

Accordingly, we find that since the application for a preferential renewal lease was not timely filed, the State Office correctly rejected it.

The appellants have not alleged any facts which, if proved, would entitle them to the renewal lease. Accordingly, the request for a hearing is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Martin Ritvo
Administrative Judge